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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,881	11/26/2003	Stephen M. Ferkovich	0182. 02	6001

25295 7590 11/15/2006

USDA, ARS, OTT
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BELTSVILLE, MD 20705-5131

EXAMINER

WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/721,881

Applicant(s)

FERKOVICH ET AL.

Examiner

Anthony Weier

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 and 11-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group A, claims 1-3 and 8-10 in the reply filed on 9/1/06 is acknowledged. The traversal is on the ground(s) that the search of Species A would inherently encompass the search of the other claimed species, especially since the three groups were classified in the same area. This is not found persuasive because the search of said species requires searching areas beyond the classification given. Moreover, such search of each species require researching different protein sources in terms of composition and the format of same (pelletized, homogenated, homogenated with pelletized ingredient, etc.).

The requirement is still deemed proper and is therefore made FINAL.

Prior Art

2. It should be noted that the non-patent references set forth in the IDS submitted 11/26/03 have not been considered (or initialed) as copies of these references do not exist in the instant application.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (U.S. Patent No. 5945271) taken together with AgAttack article.

Cohen discloses a protein supplement used to feed insects, such as *Orius insidiosus*, wherein said supplement comprises insect eggs and being in the form of a homogenated paste with particles therein. Cohen further discloses *Ephestia kuehniella* as a source of said insect eggs. In addition, Cohen discloses a supplement which increases the fecundity of the feeding insects. The claims call for the use of insect eggs in an amount that would increase the fecundity of eggs reared on such supplement. Cohen is silent regarding the connection between the use of *Ephestia kuehniella* eggs and fecundity. Nevertheless, the AgAttack article teaches rearing *Orius insidiosus* on a feed including *Ephestia* eggs directly achieves an increase in fecundity. It would have been obvious to one having ordinary skill in the art at the time of the invention to have employed the *Ephestia* eggs of Cohen to achieve such fecundity as taught by AgAttack and to have arrived at an effect amount through routine experimental optimization.

The instant claims further call for said homogenate to have been purified by certain methods. When considering the preparation of a feed product, particularly one with a benefit, it is notoriously well known to provide purification of ingredients to maximize said benefit and remove the presence of contaminants. For example, it is well known to purify food ingredients prior to preparation of foods and delivery to same to the consumer. Likewise, with an insect feed as set forth in Cohen, as modified above, it would have been further obvious to have included a purification of the ingredients including the insect eggs. As for the particular method of purifying as set forth in the instant claims, it is not seen where same would provide for an unexpected results in that the instant claims are drawn to the end product and not the steps of

preparing same. It is not seen where such specific purifying means would provide for a patentable distinction with regard to the product of the instant claims. Nevertheless, all of these purification means are notoriously well known, and it would have been further obvious to have employed any one of same as art recognized alternatives.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Monday-Thursday.

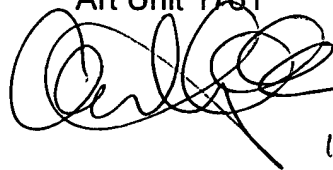
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier
November 10, 2006

Anthony Weier
Primary Examiner
Art Unit 1761



11 | 10 | 06